

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOHN W. RAITHEL and LINDA S. RAITHEL,

Plaintiffs-Appellants,

v

PAMELA W. COLE and G.P. COLE HAIR  
SALON,

Defendants-Appellees.

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UNPUBLISHED

July 13, 2001

No. 222499

Wayne Circuit Court

LC No. 98-827095-CK

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Plaintiffs appeal as of right the final order of the trial court, insofar as it incorporates the order granting partial summary disposition as to their contract claim. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties entered into a commercial lease agreement and a contract for the sale of business assets. Defendants exercised their option to purchase the property, and the terms of the lease and contract were incorporated in that sale. The contract included a provision governing the retention of Linda Raithel's services. The provision stated that she shall continue to perform services, she shall receive 100% of the fees for services rendered to her clientele, she shall receive without costs all necessary supplies and materials, and she shall receive rent-free space in which to render her services.

Plaintiffs brought this action after defendants removed her property from the salon. The trial court granted partial summary disposition of the contract claim, finding that the agreement was silent as to duration and method of termination, and would be deemed terminable at the will of either party. A remaining claim was submitted to mediation, and a final order was entered after both sides accepted the mediation.

Defendants challenge this Court's jurisdiction to hear an appeal from a dismissal order entered after mediation. MCR 2.403(M)(1) provides that a dismissal entered as a result of mutual acceptance of a mediation evaluation shall be deemed to dispose of all claims in the action. In *Reddam v Consumer Mortgage Corp*, 182 Mich App 754, 756-757; 452 NW2d 908 (1990), this Court found that absent a showing that less than all issues were submitted to mediation, a mediation award settles the entire matter. The plaintiff's acceptance of the award

settled all claims, including those which had been dismissed by partial summary disposition. *Id.*, 757.

Summary disposition of a claim does not by itself remove that claim from the purview of the mediation panel. *Joan Automotive Industries, Inc v Check*, 214 Mich App 383, 388; 543 NW2d 15 (1995). A party must act to exclude a dismissed claim from the mediation. Once a party has accepted mediation, the party is no longer an aggrieved party within the meaning of MCR 7.203(A), and the Court is without jurisdiction to hear the appeal. *Id.*, 390.

Here, both mediation summaries indicate that the mediation panel was only to consider the remaining issues that were not governed by the court's order granting partial summary disposition.. Where the claim was excluded from mediation and was not incorporated in the award, plaintiffs remain aggrieved, and this Court has jurisdiction.

The trial court properly granted defendants' motion for summary disposition. The cardinal rule in contract interpretation is to ascertain the intent of the parties. The court must look to the terms within the contract to discover that intent. See *Rasheed v Chrysler Corp*, 445 Mich 109, 127; 517 NW2d 19 (1994).

Where a contract shows that the parties have not agreed upon the term, duration, or manner of termination of the contract, it is generally deemed to be terminable at the will of either party. *Lichnovsky v Ziebart Int'l Corp*, 414 Mich 228, 236; 324 NW2d 732 (1982). The parties' contract did not address the term, duration, or manner of termination of the contract. Following the general rule, the court properly found that the contract was terminable at the will, and that defendants did not breach the contract.

Affirmed.

/s/ Henry William Saad  
/s/ Donald E. Holbrook, Jr.  
/s/ William B. Murphy